

## Message Text

PAGE 01 STATE 022592

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ORIGIN TRSE-00

INFO OCT-01 EUR-12 NEA-09 ISO-00 AGR-05 COME-00 LAB-04

NSF-01 INT-05 L-02 EB-07 AID-05 SP-02 NSC-05 RSC-01

CIEP-01 SS-15 STR-01 OMB-01 CEA-01 SIL-01 OES-03

SAM-01 CIAE-00 INR-07 NSAE-00 A-01 PER-01 MMS-01

SSO-00 NSCE-00 INRE-00 /093 R

DRAFTED BY TREASURY:NJACKLIN:DSC

APPROVED BY NEA:SSOBER

AGRICULTURE/ERS:CDOKE

COMMERCE/CAGNE:JHEARN

LABOR/BIA:DLAZORCHICK

NSF/OSIA:WWETMORE

INTERIOR/IA:RSTURGILL

L/NEA:BKHUFFMAN EB/CBA:JNESVIG

L/T:SNILSEN AID/GC/NESA:MKITAY

NEA/ARP:RAHERNE TREAS:LWBOWDEN

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O 310118Z JAN 75

FM SECSTATE WASHDC

TO AMEMBASSY JIDDA IMMEDIATE

INFO USMISSION OECD PARIS IMMEDIATE

C O N F I D E N T I A L STATE 022592

E.O. 11652: GDS

TAGS: USSAEC, EAID, SA, US

SUBJECT: JOINT ECONOMIC COMMISSION TECHNICAL COOPERATION  
AGREEMENT

REF: JIDDA 00470

PARIS FOR TREASURY ASST. GENERAL COUNSEL BRADFIELD

1. APPRECIATE EMBASSY'S EFFORTS IN GETTING THE SAUDIS  
RESPONSE TO THE PROPOSED TCA. ACCEPT THE SAUDI CHANGES  
IN LARGE MEASURE, WITH SOME MODIFICATIONS AS INDICATED  
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PAGE 02 STATE 022592

BELOW.

2. WITH RESPECT TO COST INCURRED UNDER THE AGREEMENT, THE  
SAUDIS PREFER A MORE GENERAL APPROACH THAN WE BELIEVE IS

PRUDENT. SINCE ONE MAJOR PURPOSE OF THIS AGREEMENT IS TO ANTICIPATE AND RESOLVE DIFFERENCES THAT MAY ARISE IN THE FUTURE, IT IS USEFUL AND APPROPRIATE TO MENTION IN THE AGREEMENT AT LEAST THREE CATEGORIES OF COSTS (INDIRECT AND TERMINATION COSTS AND THE COSTS OF PROJECT DEVELOPMENT ACTIVITIES RESPONSIVE TO SAG REQUESTS WHICH MAY NOT RESULT IN AN APPROVED PROJECT) AS WELL AS THE POSSIBILITY OF UN-ANTICIPATED INCREASED COSTS, THAT COULD BE A SOURCE OF FUTURE MISUNDERSTANDINGS.

3. PROPOSE PARAGRAPHS 3 AND 4 TO BE COMBINED INTO A NEW PARAGRAPH 3 AS FOLLOWS: A. "AT THE REQUEST OF THE GOVERNMENT OF SAUDI ARABIA PURSUANT TO AGREEMENT BETWEEN

THE TWO GOVERNMENTS, THE GOVERNMENT OF THE UNITED STATES MAY PREPARE DEVELOPMENT PROJECT PROPOSALS, TECHNICAL OR ECONOMIC STUDIES AND UNDERTAKE DEVELOPMENT PROJECTS IN ACCORDANCE WITH MUTUALLY AGREED COST ESTIMATES AND THE PROVISIONS OF THIS AGREEMENT. THE GOVERNMENT OF SAUDI ARABIA SHALL DEFRAY ALL COSTS ARISING FROM SUCH ACTIVITIES INCLUDING INDIRECT COSTS, PLANNING COSTS, AND THE COSTS OF PROJECT TERMINATION, AS WELL AS ANY TAXES ON OWNERSHIP OR USE OF PROPERTY AND ANY CUSTOMS DUTIES, IMPORT AND EXPORT TAXES OR ANY OTHER TAXES OR SIMILAR CHARGES IN SAUDI ARABIA."

B. THE FIRST SENTENCE OF THE SAUDI PROPOSAL FOR COMBINING ARTICLES 3 AND 4 HAS BEEN RETAINED IN SUBSTANCE, WITH LANGUAGE CLARIFICATION ONLY. THEIR SECOND SENTENCE HAS BEEN EXPANDED TO SPECIFICALLY MENTION INDIRECT, PLANNING, TERMINATION COSTS, TAXES AND DUTIES, MERELY TO MAKE CLEAR THAT SAUDIS RECOGNIZE THAT THESE EXPENSES COULD ARISE. WITH RESPECT TO TAXES AND DUTIES, THE SAUDIS MAY CHOOSE TO WAIVE IMPOSITION OF SUCH FEES ON EQUIPMENT, SUPPLIES AND MATERIALS IMPORTED INTO SAUDI ARABIA OR ACQUIRED THERE FOR PURPOSES OF THIS AGREEMENT BY THE USG AND BY ANY PRIVATE CONTRACTORS WHO ARE UNDER CONFIDENTIAL

PAGE 03 STATE 022592

CONTRACT WITH USG. IN SUCH CASE, THESE SPECIFIC EXPENSES WOULD NOT ARISE. IF SAG ACCEPTS COMBINATION OF PARAS 3 AND 4 AND ELIMINATION OF PARA 7, EMBASSY SHOULD RE-NUMBER PARAGRAPHS AS APPROPRIATE.

C. THE REFERENCE TO THE COST ESTIMATE PROCESS, WHICH ALLOWS THE SAUDIS AN OPPORTUNITY TO KNOW THE APPROXIMATE EXPENSE OF A PROJECT PRIOR TO THEIR UNDERTAKING SUCH EXPENSE, WILE ALSO PROVIDING THE USG WITH ASSURANCE THE FUNDS NECESSARY TO MEET CONTRACTUAL COMMITMENTS WILL BE PROVIDED, HAS BEEN RETAINED FROM THE PRIOR DRAFT. THIS SHOULD BE AGREEABLE TO THE SAUDIS SINCE REFERENCE TO COST ESTIMATES WAS NOT OBJECTED TO AS IT APPEARS IN PARAGRAPH

6(A). PRECISE DRAFTSMANSHIP REQUIRES ESTIMATES BE REFERRED TO IN PARAGRAPH 3 AS WELL.

4. THE EMBASSY PROPOSAL FOR PARAGRAPH 5 CAN BE ACCEPTED IN FULL, EXCEPT FOR ONE MINOR CHANGE. THE REVISED DRAFT WOULD READ AS FOLLOWS:

A. "THE GOVERNMENT OF THE UNITED STATES MAY ASSIGN SUCH PERSONNEL TO SAUDI ARABIA AS MAY BE NECESSARY TO PROVIDE ADEQUATE ADMINISTRATIVE AND STAFF SUPPORT TO CARRY OUT THE PURPOSES OF THIS AGREEMENT. THE GOVERNMENT OF SAUDI ARABIA WILL DEFRAY ALL COSTS OF PROVIDING SUCH ADMINISTRATIVE AND STAFF SUPPORT."

B. WE ARE CONFUSED BY THE SAUDI SUGGESTION (PARAGRAPH "3A" OF REFTEL) THAT SUPPORT PERSONNEL WOULD BE LOCATED "IN THE SAUDI ARABIA GOVERNMENT", AND ASSUME FROM YOUR COMMENT (PARAGRAPH "3C" REFTEL) THAT THAT FORMULATION IS SUPERSEDED. AS FAR AS HIRING OF SAUDI EMPLOYEES FOR SUPPORT OF TCA, PARAGRAPH 5 IS NOT INTENDED TO ADDRESS THAT PROBLEM AT ALL; IT IS INSTEAD INTENDED TO PROVIDE FOR ASSIGNMENT OF USG PERSONNEL TO SAUDI ARABIA. QUESTION OF ASSIGNING SAUDI PERSONNEL TO WORK ON COMMISSION EFFORT IS ENTIRELY A MATTER FOR SAG TO DECIDE. WHILE WE UNDERSTAND HOW IT MIGHT PROVIDE SAG WITH BUREAUCRATIC FLEXIBILITY IF THIS ARTICLE WERE BROADENED TO INCLUDE PERSONNEL FROM WITHIN ITS RANKS, WE SEE LITTLE RELATIONSHIP BETWEEN THAT OBJECTIVE AND BASIC PURPOSE OF TCA,  
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PAGE 04 STATE 022592

WHICH IS TO PROVIDE STRUCTURE FOR USG PROVISION OF TECHNICAL ASSISTANCE, ALONG WITH NECESSARY SUPPORT AND RELATED SERVICES, TO SAUDI ARABIA, AT ITS EXPENSE. WE SYMPATHIZE WITH ABA AL-KHAYL'S DESIRE TO TRAIN SAG PERSONNEL THRU ACTUAL EMPLOYMENT IN COMMISSION WORK, BUT THINK THAT OBJECTIVE CAN BE MET AS WE MOVE FURTHER ALONG IN ORGANIZING THE JOINT COMMISSION STRUCTURE FOR SAUDI ARABIA, AND WE ARE PREPARED TO TAKE IT FULLY INTO ACCOUNT IN THAT CONTEXT.

C. SINCE THE "PURPOSES OF THIS AGREEMENT" ARE TO PROVIDE TECHNICAL ASSISTANCE, THE SUPPORTING STAFF REFERRED TO IN THIS PROVISION IS THE SUPPORTING PERSONNEL NECESSARY FOR THAT ASSISTANCE. IT DOES NOT REFER TO THE USG STAFF OF THE JOINT COMMISSION OFFICE IN RIYADH.

5. IF SAG ACCEPTS NEW PARAGRAPH 3 ABOVE, PARAGRAPH 7 CAN BE OMITTED AS THE SAG PROPOSED, WITH PARAGRAPH 6(A) REVISED TO ENCOMPASS THE CONCEPT OF UNANTICIPATED INCREASED COSTS, SO AS TO INDICATE THE POSSIBILITY OF SUCH COSTS HAS BEEN CONTEMPLATED BY BOTH PARTIES TO THE AGREEMENT.

6. PROPOSE PARAGRAPH 6(A) AS FOLLOWS:

"THE GOVERNMENT OF SAUDI ARABIA WILL ESTABLISH A DOLLAR TRUST ACCOUNT IN THE UNITED STATES TREASURY AND PROVIDE IN SUCH ACCOUNT, IN ADVANCE, THE FULL AMOUNT OF FUNDS NECESSARY TO COVER THE COSTS DESCRIBED IN PARAGRAPH 3, OR ANY INCREASED COST UNDER ANY MUTUALLY AGREED INCREASED COST ESTIMATE. THE UNITED STATES GOVERNMENT MAY DRAW ON THIS ACCOUNT TO DEFRAY THE COSTS AS INCURRED BY THE GOVERNMENT OF THE UNITED STATES IN PROVIDING SUCH SERVICES."

7. PARAGRAPH 6(D) CAN BE OMITTED IN ACCORDANCE WITH SAUDI REQUEST.

8. PROPOSE PARAGRAPH 9 AS FOLLOWS:

A. "EMPLOYEES OF THE UNITED STATES GOVERNMENT WHO ARE: CONFIDENTIAL

PAGE 05 STATE 022592

(1) ASSIGNED TO PERFORM SERVICES UNDER THIS AGREEMENT, OR

(2) ASSIGNED TO PROVIDE SUPPORT FOR SUCH PERSONNEL WILL BE CONSIDERED ATTACHED TO THE EMBASSY OF THE UNITED STATES OF AMERICA IN THE KINGDOM OF SAUDI ARABIA AND THEY AND THEIR DEPENDENTS IN THE KINGDOM OF SAUDI ARABIA SHALL BE ENTITLED TO THE PRIVILEGES AND IMMUNITIES ACCORDED TO PERSONNEL OF THE EMBASSY OF COMPARABLE RANK AND CATEGORY."

B. THE FIRST SENTENCE OF THE PRIOR U.S. DRAFT HAS BEEN RETAINED MAINLY IN ORDER TO CONFORM THE LANGUAGE TO THE VIENNA CONVENTION AND THE STANDARD LANGUAGE IN BILATERAL AGREEMENTS, WITH RESPECT TO PRIVILEGES AND IMMUNITIES. THE SECOND SENTENCE HAS BEEN REVISED BECAUSE WE AGREE THE SAUDIS SHOULD HAVE THE RIGHT TO HOLD PRIVATE CONTRACTORS AND EMPLOYEES SUBJECT TO SAUDI LAWS.

9. PROPOSE PARAGRAPH 11 AS FOLLOWS:

A. "THE GOVERNMENT OF SAUDI ARABIA AGREES THAT NO CLAIM WILL BE BROUGHT BY THE GOVERNMENT OF SAUDI ARABIA AGAINST THE GOVERNMENT OF THE UNITED STATES OR ITS EMPLOYEES THAT MAY ARISE AS A RESULT OF THE TECHNICAL SERVICES FURNISHED UNDER THIS AGREEMENT AND FURTHER AGREES TO HOLD THE GOVERNMENT OF THE UNITED STATES HARMLESS AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AS A RESULT OF THE TECHNICAL SERVICES FURNISHED UNDER THIS AGREEMENT.

B. THE GOVERNMENT OF SAUDI ARABIA RESERVES THE RIGHT TO BRING ANY CLAIMS IT HAS AGAINST ANY PRIVATE PERSONS,

INDIVIDUAL OR CORPORATE, PERFORMING SERVICES UNDER THIS AGREEMENT, AND THE GOVERNMENT OF THE UNITED STATES SHOULD EXERCISE REASONABLE EFFORTS INCLUDING ASSIGNING RIGHTS OF THE GOVERNMENT OF THE UNITED STATES TO FACILITATE THE FOREGOING."

C. ALTHOUGH THE INTENT OF THE SAUDI PROPOSAL IS UNCLEAR, THIS REVISED DRAFT WOULD APPEAR TO BE MUTUALLY ACCEPTABLE. THE SAG WOULD HOLD THE USG HARMLESS AGAINST ALL CLAIMS  
CONFIDENTIAL

PAGE 06 STATE 022592

BROUGHT AGAINST THE UNITED STATES GOVERNMENT BY EITHER

GOVERNMENT EMPLOYEES, OR PRIVATE CONTRACTORS OR THEIR EMPLOYEES, BASED ON THEIR CONTRACTUAL OR OTHER LEGAL RELATIONSHIP TO THE USG. THE SAG ITSELF WOULD NOT BRING CLAIMS AGAINST THE USG. IT NONETHELESS, AS DESIRED, COULD BRING ANY CLAIMS IT HAS AGAINST PRIVATE CONTRACTORS OR EMPLOYEES UNDER THE LAWS OF SAUDI ARABIA OR THE UNITED STATES.

10. WITH REGARD TO PROPOSED PARAGRAPH 13 CONTAINED PARA 7 REFTEL, IT DOES NOT APPEAR TO US NECESSARY TO DESIGNATE, AS PART OF THIS FORMAL INTERGOVERNMENTAL AGREEMENT, ADMINISTRATIVE OFFICES TO FULFILL THE FUNCTIONS OF THE SAG AND USG WITH RESPECT TO THE PROVISION OF TECHNICAL ASSISTANCE PURSUANT TO THE AGREEMENT. AFTER THE TCA IS SIGNED, WE CAN EXCHANGE OFFICE DESIGNATIONS WITH THE SAUDIS FOR THIS PURPOSE. IF THE SAUDIS DESIRE, HOWEVER, A PARAGRAPH MIGHT BE INCLUDED IN THE PRESENT AGREEMENT TO READ AS FOLLOWS: "EACH SIDE SHALL DESIGNATE APPROPRIATE ADMINISTRATIVE ENTITIES TO DEAL WITH EACH OTHER IN FULFILLING THE PROVISIONS OF THIS AGREEMENT CONCERNING THE FURNISHING OF TECHNICAL ASSISTANCE." KISSINGER

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